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AUG 05 2008

Applicants: Denise J. Nelson et al. Docket No.: 17,858.2
Serial No.: 10/750,505 T.C./A.U.: 3721
Confirmation No.: 1813 Examiner: Sameh Tawfik
Filed: December 31, 2003 Date: August 5, 2008
For: METHODS OF FOLDING DISPOSABLE ABSORBENT ARTICLES

Commissioner for Patents
P.O. Box 1450
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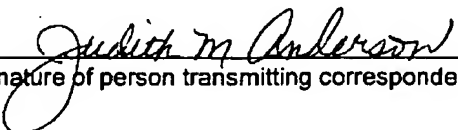
Brief on Appeal (16 pages)

17 total pages, including this page

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For: Methods Of Folding Disposable Absorbent Articles

Brief on Appeal to the Board of Patent Appeals and Interferences

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 41.37 Appellants respectfully submit this Brief in support of their Appeal of Examiner Tawfik's **Final Rejection** of claims 1-8, 10-19, 21, 22, 35-39, 41-46, and 48 which was mailed on March 12, 2008.

On June 12, 2008, Appellants, pursuant to 37 C.F.R. 41.31 mailed a timely Notice of Appeal. Thus, the time period for filing this Brief ends on August 12, 2008.

Real Party in Interest

The present Application has been assigned to Kimberly-Clark Worldwide, Inc.

Related Appeals and Interferences

This is the third Appeal for the above-identified patent Application without a Board of Appeals decision. The first Appeal Brief was filed September 7, 2006, after which prosecution was reopened by way of the Office Action dated November 13, 2006. A second Appeal Brief was filed on May 31, 2007, after which prosecution was reopened by way of the Office Action dated October 17, 2007. There are no other related appeals and/or interferences with regard to the present Application.

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As this is the third Appeal Brief submitted in this application, and because the sole ground remaining in this case is identical to the second ground in the first Appeal Brief, Appellants request that the Examiner either issue a Notice of Allowance, or file an Examiner's Answer and allow the application to go to the Board for a decision.

Moreover, the following data lists the current and prior appeals related to the present application.

Appl. No./ Atty Docket No.	Examiner (Art Unit)	Current status	References cited in current rejections
10/366,872 17858	Ginger T. Chapman (3761)	RCE and Preliminary Amendment dated July 23, 2008. No decision on one previous appeal.	1,994,135 2,764,859 4,934,535 5,484,636
10/750,479 17858.1	Jacqueline F. Stephens (3761)	Brief on Appeal filed January 11, 2008. Examiner's Answer dated June 4, 2008.	6,318,555
10/750,505 17858.2	Sameh Tawfik (3721)	This Brief on Appeal. No decisions on two previous appeals.	JP 10-095,481
10/749,988 17858.3	Luan Kim Bui (3728)	Brief on Appeal filed July 23, 2008. No decision on one previous appeal.	3,403,776 2,676,702 JP 10-095,481 6,640,976 3,286,435 4,896,768

Status of Claims

Claims 1-8, 10-19, 21, 22, 35-39, 41-46, and 48 remain in the application with claims 1-8, 10-19, 21, 22, 35-39, 41-46, and 48 being finally rejected. Claims 9, 20, 23-34, 40, and 47 have been cancelled.

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Status of Amendments

No amendments were filed after the final Office Action mailed March 11, 2008.

Summary of Claimed Subject Matter

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

Independent claim 1 is directed to a method of folding a disposable absorbent article, as representatively illustrated, for example, in Figs. 7-17. The disposable absorbent article (30) has an initial upper surface (70), an initial lower surface (72), a longitudinal centerline (74), a transverse centerline (76), opposing first longitudinal side edges (46), and opposing first transverse end edges (48). Page 8, lines 1-5 and Figs. 3-6. The article (30) has an unfolded configuration. Page 16, lines 6-10. The method of folding includes forming one fold extending in a transverse direction by bringing a portion of the initial upper surface (70) into a facing relationship with another portion of the initial upper surface (70), the one fold being spaced between opposing first transverse end edges (48), the resulting partially-folded article having an intermediate first surface (80), an intermediate second surface (82) and opposing second transverse end edges (84), and thereafter forming a number, greater than one, of transversely extending folds in an accordion-like manner, the transversely extending accordion-like folds being spaced between opposing second transverse end edges (84) and thereby forming a folded article. Page 9, lines 1-31. The folded article has a folded configuration area and an unfolded configuration area and a ratio between the folded configuration area and the unfolded configuration area of no more than 0.14. Page 12, lines 15-22.

Independent claim 12 is directed to a method of folding a disposable absorbent article, as representatively illustrated, for example, in Figs. 7-17. The disposable absorbent article (30) has an initial upper surface (70), an initial lower surface (72), a longitudinal centerline (74), a transverse centerline (76), opposing first longitudinal side edges (46), opposing first transverse end edges (48), side margins (64), and opposing terminal side edges (60). The article (30) has an unfolded configuration. Page 16, lines 6-10. The method of folding

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includes forming at least one longitudinally extending fold in each side margin (64) by folding each first longitudinal side edge (46) inward toward the initial upper surface (70) and thus bringing at least a portion of the initial upper surface (70) into facing relationship with another portion of the initial upper surface (70), then forming one fold extending in a transverse direction by bringing a portion of the initial upper surface (70) into a facing relationship with another portion of the initial upper surface (70), the one fold being spaced between opposing first transverse end edges (48), the resulting partially-folded article having an intermediate first surface (80), an intermediate second surface (82), opposing second longitudinal side edges (47) and opposing second transverse end edges (84), and thereafter forming a number, greater than one, of transversely extending folds in an accordion-like manner, the transversely extending accordion-like folds being spaced between opposing second transverse end edges (84) and thereby forming a folded article. Page 10, lines 1-31. The folded article has a folded configuration area and an unfolded configuration area and a ratio between the folded configuration area and the unfolded configuration area of no more than 0.14. Page 12, lines 15-22.

Independent claim 35 is directed to a method of folding a disposable absorbent article, as representatively illustrated, for example, in Figs. 7-17. The disposable absorbent article (30) has an initial upper surface (70), an initial lower surface (72), a longitudinal centerline (74), a transverse centerline (76), opposing first longitudinal side edges (46), and opposing first transverse end edges (48). Page 8, lines 1-5 and Figs. 3-6. The article (30) has an unfolded configuration. Page 16, lines 6-10. The method of folding includes forming a number, greater than two, of transversely extending folds in an accordion-like manner, the transversely extending folds being spaced between opposing first transverse end edges (48) and thereby forming a folded article. Page 9, lines 1-32. The folded article has a folded configuration area and an unfolded configuration area and a ratio between the folded configuration area and the unfolded configuration area of no more than 0.14. Page 12, lines 15-22.

Independent claim 42 is directed to a method of folding a disposable absorbent article, as representatively illustrated, for example, in Figs. 7-17. The disposable absorbent article (30) has an initial upper surface (70), an initial lower surface (72), a longitudinal centerline (74), a transverse centerline (76), opposing first longitudinal side edges (46), opposing first transverse end edges (48), side margins (64), and opposing terminal side edges (60). The

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article (30) has an unfolded configuration. Page 16, lines 6-10. The method of folding includes forming at least one longitudinally extending fold in each side margin by folding each first longitudinal side edge (46) inward toward the initial upper surface (70) and thus bringing at least a portion of the initial upper surface (70) into facing relationship with another portion of the initial upper surface (70), then forming a number, greater than two, of transversely extending folds in an accordion-like manner, the transversely extending folds being spaced between opposing first transverse end edges (48) and thereby forming a folded article. Page 9, lines 1-32. The folded article has a folded configuration area and an unfolded configuration area and a ratio between the folded configuration area and the unfolded configuration area of no more than 0.14. Page 12, lines 15-22.

Grounds of Rejection to be Reviewed on Appeal

Ground 1

Claims 1-8, 10-19, 21, 22, 35-39, 41-46 and 48 stand rejected under 35 U.S.C. § 103(a) as being anticipated and thus unpatentable, over Japanese Patent Application JP 10-095,481 published on April 14, 1998 by Narawa et al. for applicant KAO Corporation (hereinafter "Kao")

Argument

Ground 1 -- Rejection Of Claims 1-8, 10-19, 21, 22, 35-39, 41-46 and 48

Claims stand 1-8, 10-19, 21, 22, 35-39, 41-46 and 48 rejected under 35 U.S.C. § 103(a) as being anticipated by Kao. Appellants respectfully submit that the Examiner's rejection is improper and should be reversed.

To establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143.

First, there is no motivation or suggestion in Kao for one of skill in the art to modify the Kao disclosure to achieve the claimed invention, and the Examiner has not described any

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motivation or suggestion outside of Kao, such as in general knowledge, to do so. In fact, the only motivation or suggestion cited by the Examiner is one in the opposite direction in that Kao discusses thickness compression ratios and specifically teaches that compression to less than a 0.15 ratio produces undesirable and unworkable results. One skilled in the art does not seek "optimum or workable ranges" in an area that has been shown to produce far from optimum results. The Examiner has not explained how a warning against too small a thickness compression ratio in Kao would make obvious experimenting with a completely different ratio in the present application.

Such a position appears to be the very position rejected by the court in *In re Antonie* 195 USPQ 6 (CCPA 1977). In particular, the court noted that an assertion that it would always be obvious to one of ordinary skill in the art to try varying every parameter of a system in order to optimize the effectiveness of the system is improper "if there is no evidence in the record that the prior art recognized that particular parameter affected the result" (*Id. at 8 (emphasis added)*). Thus, the court made it clear that the recognition of a particular parameter as a result-effective or optimizable variable must come from the cited reference, in this case Kao. As Kao does not discuss the ratio between a folded configuration area and an unfolded configuration area, Kao cannot anticipate, teach, or suggest the claims of the present application.

Second, the Examiner has not described in any manner how or even if there might be a reasonable expectation of success in proceeding contrary to the teachings of Kao.

Third, all the claim limitations are not taught or suggested by the prior art reference. If anything, any teachings or suggestions in Kao are away from the claimed invention. More specifically, and with respect to independent claims 1, 12, 35, and 42, there is no anticipation, teaching, or suggestion by Kao to achieve the claimed invention. Kao and the present application describe completely different ways of reducing different dimensions of an absorbent article. Kao describes compressing an absorbent article to remove the air therefrom and thereby decrease the thickness of the article. See translation, paragraphs 0010, 0015, and 0019. The article is then individually sealed in airtight packaging such that its compression is maintained. See translation, paragraph 0010. The ratios listed by Kao and referenced by the Examiner are a comparison of the thicknesses of an unpackaged, uncompressed article to a packaged, compressed article. See translation, paragraph 0019.

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Such an article might or might not be folded; the status of folding is irrelevant to the comparison as long as, presumably, the article has the same folds before and after compression. There is no evidence that the width and height dimensions of Kao's article change appreciably under Kao's compression. As a result, the ratio between the folded configuration area and the unfolded configuration area of Kao's article also does not change appreciably under Kao's compression.

On the contrary, the present invention claims a reduction in the overall footprint or area of an absorbent article by folding the absorbent article. The resulting folded article may very well have an increased thickness compared to an unfolded article, which is opposite the effect sought by Kao. For a proper 35 U.S.C. § 103 rejection, the reference must teach or suggest every aspect of the claimed invention either explicitly or impliedly. Kao does not explicitly or impliedly teach or suggest a folded article having a folded configuration area and an unfolded configuration area wherein the folded article has a ratio between the folded configuration area and the unfolded configuration area of no more than 0.14. There is nothing in Kao that teaches that any article folding beyond a typical, perfunctory fold is desirable or even possible.

The comparison of folded verses unfolded configuration areas in the present application is quite dissimilar from the comparison of compressed verses uncompressed thicknesses in Kao. There is no way to compare a thickness compression ratio to an area reduction ratio as these are separate and independent physical mechanisms.

Moreover, claims 2-8, 10, 11, 13-19, 21, 22, 36, and 43, which all eventually depend from these allowable independent claims, are also accordingly patentable over Kao. For at least the reasons set forth above, Appellants respectfully request that all the rejections under 35 U.S.C. § 103(a) be withdrawn.

Conclusion

For the reasons stated above it is Appellants' position that the Examiner's rejection of claims has been shown to be untenable and should be **reversed** by the Board.

This is the third Appeal for the above-identified patent Application without a Board of Appeals decision. Therefore, the previously-paid fee for the Appeal dated September 7, 2006, which was applied to the Appeal dated May 31, 2007, and is to be applied to the present

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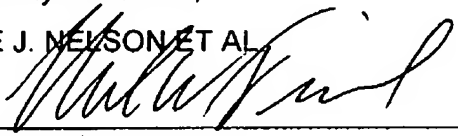
Appeal, dated August 5, 2008. Any additional prosecutorial fees which are due may also be charged to deposit account number 11-0875.

The undersigned may be reached at: (920) 721-8863.

Respectfully submitted,

DENISE J. NELSON ET AL

By



Randall W. Fieldhack
Registration No.: 43,611

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Claims Appendix

The claims on appeal are:

1. A method of folding a disposable absorbent article, the article having an initial upper surface, an initial lower surface, a longitudinal centerline, a transverse centerline, opposing first longitudinal side edges, opposing first transverse end edges and an unfolded configuration, the method of folding comprising: forming one fold extending in a transverse direction by bringing a portion of the initial upper surface into a facing relationship with another portion of the initial upper surface, the one fold being spaced between opposing first transverse end edges, the resulting partially-folded article having an intermediate first surface, an intermediate second surface and opposing second transverse end edges, and thereafter forming a number, greater than one, of transversely extending folds in an accordion-like manner, the transversely extending accordion-like folds being spaced between opposing second transverse end edges and thereby forming a folded article having a folded configuration area and an unfolded configuration area wherein the folded article has a ratio between the folded configuration area and the unfolded configuration area of no more than 0.14.
2. The method described in claim 1, wherein the number of accordion-like transverse extending folds is an even number.
3. The method described in claim 2, wherein the number of accordion-like transverse extending folds is 2.
4. The method described in claim 2, wherein the one fold extending in a transverse direction is located substantially adjacent the transverse centerline.

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5. The method described in claim 4, wherein the accordion-like transversely extending folds are spaced substantially equally between opposing second transverse end edges.

6. The method described in claim 1, wherein the folded article has a ratio between the folded configuration area and the unfolded configuration area of no more than 0.08.

7. The method of claim 6, wherein the folded article is an infant diaper.

8. The method described in claim 1, wherein the accordion-like transversely extending folds are spaced substantially equally between opposing second transverse end edges.

10. The method of claim 1, wherein the folded article has a ratio between the folded configuration area and the unfolded configuration area of no less than 0.04.

11. The method of claim 10, wherein the folded article is an infant diaper.

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12. A method of folding a disposable absorbent article, the article having an initial upper surface, an initial lower surface, a longitudinal centerline, a transverse centerline, opposing first longitudinal side edges, opposing first transverse end edges, side margins, opposing terminal side edges and an unfolded configuration, the method of folding comprising: forming at least one longitudinally extending fold in each side margin by folding each first longitudinal side edge inward toward the initial upper surface and thus bringing at least a portion of the initial upper surface into facing relationship with another portion of the initial upper surface, then forming one fold extending in a transverse direction by bringing a portion of the initial upper surface into a facing relationship with another portion of the initial upper surface, the one fold being spaced between opposing first transverse end edges, the resulting partially-folded article having an intermediate first surface, an intermediate second surface, opposing second longitudinal side edges and opposing second transverse end edges, and thereafter forming a number, greater than one, of transversely extending folds in an accordion-like manner, the transversely extending accordion-like folds being spaced between opposing second transverse end edges and thereby forming a folded article having a folded configuration area and an unfolded configuration area wherein the folded article has a ratio between the folded configuration area and the unfolded configuration area of no more than 0.14.

13. The method described in claim 12, wherein the number of accordion-like transverse extending folds is an even number.

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14. The method described in claim 13, wherein the number of accordion-like transverse extending folds is 2.

15. The method described in claim 13, wherein the one fold extending in a transverse direction is located substantially adjacent the transverse centerline.

16. The method described in claim 15, wherein the accordion-like transversely extending folds are spaced substantially equally between opposing second transverse end edges.

17. The method described in claim 16, wherein the folded article has a ratio between the folded configuration area and the unfolded configuration area of no more than 0.08.

18. The method of claim 17, wherein the folded article is an infant diaper.

19. The method described in claim 12, wherein the accordion-like transversely extending folds are spaced substantially equally between opposing second transverse end edges.

21. The method of claim 12, wherein the folded article has a ratio between the folded configuration area and the unfolded configuration area of no less than 0.04.

22. The method of claim 21, wherein the folded article is an infant diaper.

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35. A method of folding a disposable absorbent article, the article having an initial upper surface, an initial lower surface, a longitudinal centerline, a transverse centerline, opposing first longitudinal side edges, opposing first transverse end edges and an unfolded configuration, the method of folding comprising: forming a number, greater than two, of transversely extending folds in an accordion-like manner, the transversely extending folds being spaced between opposing first transverse end edges and thereby forming a folded article having a folded configuration area and an unfolded configuration area wherein the folded article has a ratio between the folded configuration area and the unfolded configuration area of no more than 0.14.

36. The method described in claim 35, wherein the number of transversely extending accordion-like folds is an odd number.

37. The method described in claim 35, wherein the number of transversely extending accordion-like folds is an odd number greater than 4.

38. The method described in claim 37, wherein the number of transversely extending accordion-like folds is 5.

39. The method described in claim 38, wherein the transversely-extending accordion-like folds are spaced substantially equally between opposing first transverse end edges.

41. The method of claim 39, wherein the folded article is an infant diaper.

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42. A method of folding a disposable absorbent article, the article having an initial upper surface, an initial lower surface, a longitudinal centerline, a transverse centerline, opposing first longitudinal side edges, opposing first transverse end edges, side margins, opposing terminal side edges and an unfolded configuration, the method of folding comprising: forming at least one longitudinally extending fold in each side margin by folding each first longitudinal side edge inward toward the initial upper surface and thus bringing at least a portion of the initial upper surface into facing relationship with another portion of the initial upper surface, then forming a number, greater than two, of transversely extending folds in an accordion-like manner, the transversely extending folds being spaced between opposing first transverse end edges and thereby forming a folded article having a folded configuration area and an unfolded configuration area wherein the folded article has a ratio between the folded configuration area and the unfolded configuration area of no more than 0.14.

43. The method described in claim 42, wherein the number of transversely extending accordion-like folds is an odd number.

44. The method described in claim 42, wherein the number of transversely extending accordion-like folds is an odd number greater than 4.

45. The method described in claim 44, wherein the number of transversely extending accordion-like folds is 5.

46. The method described in claim 45, wherein the transversely-extending accordion-like folds are spaced substantially equally between opposing first transverse end edges.

48. The method of claim 46, wherein the folded article is an infant diaper.

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Evidence Appendix

None.

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Related Proceedings Appendix

None.